

**PT 01-5**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**FIRST ASSEMBLY  
OF GOD IN AURORA,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 98-PT-0100  
(98-45-0078)**

**P.I.N: 14-13-300-011**

**Kane County Parcel**

**Real Estate Tax Exemption for  
1998 Assessment Year**

**Alan I. Marcus  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION PURSUANT TO  
APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

**Appearances:** Mr. Dewey G. Hollingsworth of Truemper, Hollingsworth and Titiner on behalf of the First Assembly of G-D in Aurora (hereinafter the "applicant").

**SYNOPSIS:** This matter comes to be considered pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination finding that real estate identified by Kane County Parcel Index Number 14-13-300-011 (hereinafter referred to as the "subject property") was not in exempt use, and therefore did not qualify for exemption from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq* (hereinafter the "Code").

At issue herein is the limited issue of whether the subject property was “used exclusively for religious purposes,” within the meaning of Section 15-40 of the Code, during the 1998 assessment year. The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Kane County Board of Review (hereinafter the “Board”) on May 26, 1998. The Board reviewed applicant’s complaint and recommended to the Department that the entire subject property be exempt as of September 1, 1998. The Department, however, rejected this Recommendation by issuing the aforementioned determination which found that the subject property was not in exempt use.

Applicant filed a timely appeal as to this partial denial but then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that the subject property be exempt from real estate taxes under Section 15-40 of the Code, but only for 68% of the 1998 assessment year.

**FINDINGS OF FACT:**

1. The Department’s jurisdiction over this matter and its position herein are established by the determination that was issued by the Office of Local Government Services on September 24, 1998. Administrative Notice.
2. The Department’s position in this matter is that the subject property is not in exempt use. Administrative Notice.
3. The subject property had no common street address during the 1998 assessment year. It was, however, identified by Kane County Parcel Index Number 14-13-300-011 and the attached legal description. Applicant Motion Ex. No. 4.

4. Applicant, a Christian Church, obtained ownership of the subject property by means of a warranty deed dated April 27, 1998. *Id.*
5. The subject property was unimproved as of the closing date. Applicant Motion Ex. No. 16.
6. Applicant purchased the subject property with the intention of converting it into a church complex. It took the following steps in furtherance of this project during 1998:

<b>DATES</b>	<b>STEPS</b>
March 13, 1998 – December 31, 1998	<ul style="list-style-type: none"> <li>• Engaged an engineering firm, which conducted topography and other preliminary studies on the subject property.</li> </ul>
June – July, 1998	<ul style="list-style-type: none"> <li>• Started removing trees and vegetation removed from subject property.</li> </ul>
August – November, 1998	<ul style="list-style-type: none"> <li>• Had soil boring studies performed on the subject property;</li> <li>• Had archeological survey studies performed on the subject property;</li> <li>• Completed tree and vegetation removal as well as landscaping, debris removal and other preliminary site development;</li> <li>• Held intermittent prayer services at the subject property.</li> </ul>

Applicant Motion Ex. Nos. 1, 5, 6, 7, 8.

## **CONCLUSIONS OF LAW:**

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in this case. Therefore, the issues for decision herein necessarily become ones of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2<sup>nd</sup> Dist. 1987). Those issues are, precisely stated, whether: (1) applicant is entitled to a pro-rated exemption from 1998 real estate taxes because it acquired ownership of the subject property on April 27, 1998; and, (2) applicant's post-acquisitional uses of the subject property qualified as "exclusively religious" within the meaning of Section 15-40 of the Property Tax Code.

### **A. Pro-Ration Issue**

With respect to the first inquiry, the statute governing alterations in exempt status due to changes in ownership is found in Section 9-185 of the Code. This provision, states, in pertinent part, that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 ILCS 200/9-185.

In this case, the warranty deed proves that applicant obtained its "right of possession" on April 27, 1998. Accordingly, Section 9-185 mandates that any exemptions granted herein be limited to the 68% of the 1998 assessment year which transpired on or after that date.

### **B. Use Issue**

The first step in deciding whether the subject property qualifies for exemption under Section 15-40 is to set forth the pertinent Constitutional and statutory provisions as well as the applicable rules of statutory construction.

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-1 *et seq.* The Code provision that govern disposition of this case are found in Section 15-40, which states, in pertinent part, as follows:

§ 15-40. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit ... [is exempt from real estate taxation].

35 **ILCS** 200/15-40.

The word “exclusively” when used in Section 200/15-40 and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). As applied to the uses of property, a religious purpose means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

The applicable statute herein mandates that applicant demonstrate that it actually put the subject property to, or was actively developing said property for, some specifically identifiable exempt use during the period in question. *See*, 35 ILCS 200/15-40. *Compare*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was completely vacant throughout the tax year in question held non-exempt); *with*, Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828 (3<sup>rd</sup> Dist., October 13, 2000) (church property that was being actively tilled and mowed for eventual use as an extension to an existing church yard held exempt).

All of this applicant's post-acquisitional uses centered around actively adapting and developing the subject property for eventual use as a church complex. The realities of modern construction practice dictate that the process of constructing such a sophisticated improvement is inherently complex. Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987). As such, the series of steps applicant took to initiate that process, including, *inter alia*, removing trees and vegetation from the

subject property and having soil-boring and other necessary tests performed thereon, represented active adaptation of said property throughout the period in question.

Such active adaptation constitutes exempt use as a matter of law. Lutheran Church of the Good Shepherd, *supra*; Weslin Properties, *supra*; People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924) (property that was being actively developed for seminary-related uses held exempt). Therefore, the Department's determination in this matter should be modified to reflect that the subject property be exempt from 1998 real estate taxes under Section 15-40 of the Property Tax Code, but only for that 68% of the 1998 assessment year that transpired on or after April 27, 1998.

WHEREFORE, for all the above-stated reasons, it is hereby recommended that real estate identified by Kane County Parcel Index Number 14-13-300-011 be exempt from real estate taxes for 68% of the 1998 assessment year under Sections 9-185 and 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

January 31, 2001

Date

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Alan I. Marcus  
Administrative Law Judge